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# Federal Communications Commission

WASHINGTON, D.C. 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of )

Assessment and Collection of Regulatory )  
Fees For Fiscal Year 1997 )

MD Docket No. 96-186

To: The Commission

## REPLY COMMENTS OF COLUMBIA COMMUNICATIONS CORPORATION

Columbia Communications Corporation ("Columbia"), by counsel, hereby replies to initial comments submitted concerning the Notice of Proposed Rule Making, FCC 97-49, slip op. (released March 5, 1997), in the above-captioned docket ("NPRM"). These comments are focused on two principal issues. First, Columbia agrees with the observations made by several commenters that the FCC has unreasonably increased the amount of fees to be collected from geostationary satellite operators. Second, Columbia observes that Comsat Corporation ("Comsat") has made no case that it should be exempted from the obligation to pay regulatory fees associated with the FCC's oversight of Comsat's role as a signatory within the International Telecommunications Satellite Organization ("Intelsat") and the International Maritime Satellite Organization ("Inmarsat").

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**I.     The Regulatory Fee Proposed For Geostationary Space Stations Is Disproportionately High And Should Be Adjusted To Better Reflect The Actual Costs Associated With FCC Regulation Of These Licensees.**

Congress has mandated through Section 9 of the Communications Act that the Commission must assess and collect regulatory fees upon licensees and other regulated entities which arise from the agency's "enforcement activities, policy and rulemaking activities, user information services and international activities." 47 U.S.C. § 159(a). The statute further provides that the fees so derived must be "reasonably related to the benefits provided to the payor" by these activities. 47 U.S.C. § 159(b)(1)(A).

As pointed out by several commenters, the NPRM is deficient in that it does not provide the public with sufficient information to determine whether the FCC has accurately assessed the particular costs associated with regulation of geostationary satellite systems. *See* Comments of GE American Communications, Inc. ("GE Americom") at 3-4; Comments of PanAmSat Corporation ("PanAmSat") at 3. The NPRM is devoid of any description of how the FCC's cost accounting system functions, and what types of regulatory tasks have been attributed to the operational fixed-satellite service ("FSS") operators. More information is clearly required to provide commenters with adequate information upon which to evaluate the fairness of the FCC's fee determination.

It is nonetheless evident that the methodology that the Commission has used is defective in some critical respect because the proposed fees are not consistent with

any rational measure of the actual administrative costs attributable to existing geostationary FSS licensees. The FCC's increase of the geostationary space station fee by 40% (from \$70,575 to \$98,575) is simply not reasonable. *See, e.g.,* PanAmSat Comments at 3-4. For example, the figures used do not make clear whether the FCC's accounting system has appropriately limited the regulatory activities ascribed to geostationary satellite operators to those that actually benefit this class of current licensees, and are not separately covered by other Commission fees.<sup>1/</sup>

As GE Americom has pointed out in its Comments, rulemaking costs associated with the establishment of new satellite services, such as Ka-band systems, cannot be imputed to operators of existing geostationary FSS systems. *See* GE Americom Comments at 4-5. In effect, such an approach would assess companies a tax in order to promote the advent of new competitors to their existing services. Given the fact that substantial FCC resources have been expended in the past year on establishing a spectrum plan for the Ka-band, it seems likely that these costs have been inappropriately imputed to existing licensees, rather than defrayed as overhead to be charged to licensees in all FCC-regulated services, or simply eliminated from the agency's fee calculations. Accordingly,

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<sup>1/</sup> As Columbia has pointed out on prior occasions, the costs associated with satellite application processing and international coordination activities are already covered by the Commission's sizable application fees. *See* Comments of Columbia Communications Corp., MD Dkt. No. 95-3, at 5 (filed February 13, 1995). *See also* PanAmSat Comments at 4.

the Commission should reevaluate the outlays directly associated with geostationary space station licensees and correct the fee to be charged per satellite.

**II. Comsat Must Pay A Regulatory Fee For Costs Associated With Commission Oversight Of Its Signatory Roles Within Intelsat And Inmarsat.**

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In its initial comments, Comsat once again re-asserts its contention that it should be exempt from the FCC's fee collection program. *See* Comsat Comments at 4-7. This argument appears to be based on the odd notions that regulation of Comsat's signatory activities is not encompassed by the activities identified in Section 9 of the Act, and that Comsat does not actually receive the "benefits" of the regulatory efforts undertaken by the FCC concerning Comsat's signatory roles. Indeed, in connection with this second argument, Comsat goes so far as to maintain that other entities are the beneficiaries of the FCC's oversight of Comsat. *See* Comsat Comments at 5-6.

Comsat's assertions are baseless and appear to ignore the central purpose of the regulatory fee requirement — to recover the costs of government oversight of regulated entities from the regulated entities themselves. Comsat certainly cannot dispute that it is the subject of significant FCC regulation encompassed within each of the four categories set forth in the statute — enforcement, policy and rulemaking, user information services, and international activities. Comsat produces administrative costs in each of

these areas, particularly in international fora, as a result of its unique, statutorily-created role as the exclusive signatory and seller of services provided by the Intelsat and Inmarsat systems.

Comsat cannot separate its Congressionally-conferred exclusive status from the FCC's obligation to regulate Comsat in the public interest, a duty conferred by Congress as part of the same statute.<sup>2/</sup> In short, without FCC oversight, Comsat's statutory signatory role could not be carried out properly. Because Comsat's very existence must go hand-in-hand with its regulation by the Commission, the undeniable benefit of Comsat's exclusive status cannot be separated from the restrictions placed upon it pursuant to FCC regulations adopted under the Act.<sup>3/</sup> Although Comsat may not feel that it "benefits" from this oversight, these regulatory requirements are directly traceable to the perquisites it enjoys from its privileged signatory positions.

Moreover, Comsat's alternative proposal for recovery of costs associated with the FCC's regulation of Comsat's signatory activities — to "redistribute the costs associated with regulating Comsat among the entities that pay international bearer circuit fees and space station fees" (Comsat Comments at 7) — runs directly counter to the Commission's explicit determination just one year ago that the cost of regulating Comsat

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<sup>2/</sup> See, e.g., 47 U.S.C. § 721(c).

<sup>3/</sup> See Assessment and Collection of Regulatory Fees for Fiscal Year 1996, 3 CR 739, 747 (¶ 45) (P & F 1996) (" . . . Comsat benefits significantly from its status as signatory *and the regulatory oversight that is necessitated by that status.*") (emphasis added).

should be borne by Comsat rather than U.S. space station licensees generally.<sup>4/</sup> Comsat's suggested "alternative" thus would re-establish the inequity that the Commission sought to eliminate by adopting the Signatory Fee.

**III. The Commission Has Appropriately Limited Its International Bearer Circuit Fee To Those Entities Regulated As Common Carriers.**

Finally, Comsat is also mistaken in suggesting that international bearer circuit fees should be charged to common carriers and non-common carriers alike. *See* Comsat Comments at 10-12. Again, this assertion seems to miss the point that the FCC is charged with imposing regulatory fees. Because common carriers are closely regulated by the Commission, they are a source of administrative costs for the agency. By contrast, non-common carriers offer services subject to private, individually tailored agreements, rather than publicly-filed tariffs, and are thus not subject to the range of Title II filing requirements that apply to common carriers.

To the extent that Comsat believes that "non-common carrier satellites and undersea cables often offer capacity in a manner that meets the definition of common carriage,"<sup>5/</sup> its complaint would appear to be with the regulatory classification of

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<sup>4/</sup> *See* Assessment and Collection of Regulatory Fees for Fiscal Year 1996, 3 CR 2115, 2119 (¶¶ 44-45) (P & F 1996) ("[W]e are persuaded that the costs of our activities related to the signatories should be recovered from the U.S. Signatories rather than from space station licensees generally.")

<sup>5/</sup> Comsat Comments at 12 n.18.

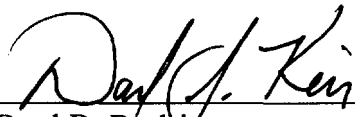
particular service providers and not with the sound policy of charging common carrier regulatory fees only to those entities that are actually regulated as common carriers. It is axiomatic that regulatory fees cannot be charged for activities that are not subject to regulation.

**IV. Conclusion**

For the foregoing reasons, the Commission should adjust downward the annual regulatory fee to be paid for geostationary FSS space stations so that it more accurately reflects the costs attributable to these operators. In addition, the Commission should reject the specious assertions offered by Comsat that it should be exempted from payment of regulatory fees and that private carriers should be charged fees as if they were common carriers.

Respectfully submitted,

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